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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/623,627 | 07/21/2003 | David S. Benco | LUTZ 2 00216 | 5178 |

7590

01/27/2006

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EXAMINER

DOAN, PHUOC HUU

ART UNIT

PAPER NUMBER

2687

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/623,627

Applicant(s)

BENCO ET AL.

Examiner

PHUOC H. DOAN

Art Unit

2687

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 19-22.
Claim(s) objected to: _____.
Claim(s) rejected: 1-18.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Attached an Office Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/05/2006 have been fully considered but they are not persuasive.
2. **Applicant's remarks:** the rejection of claims 1-18 under 35 U.S.C & 103, the proposed combinations of Haymes with Oh fails to teach each and every element of claims.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Haymes and Oh discloses all the limitation in the present of invention.

Applicant's remarks: Haymes reference does not disclose step of: receiving position data from a powered up mobile station located within the cell, the position data sent by the mobile station in response to the mobile station determining that a

received pilot strength measurement message is less than a predetermined threshold.

Examiner's response: based on the Applicant's specification in page 12, par. [0045-0046] to defined the claim invention above. Haymes cited the same scope of invention such as the collected data the collected data form a database which is analyzed to generate coverage maps "Abstract" database are stored the error by transmit and receive between the mobile station and base station in particularly determining the actual level of service obtained for mobile network; and a database form a map of **dead zones** (col. 6. lines 2-12).

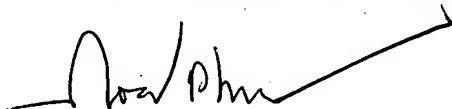
In the fundamental of wireless communication system, if mobile device turn of the power, at the base station and MSC "mobile switching center" which control channel never determined the position of mobile device. **Haymes, and Oh are considering the mobile device was power on at the time.**

Haymes discloses when the number of error packets exceeds a predetermined threshold value is equivalence that **"is less than a predetermined threshold"** (col. 5, lines 10-30), also see Applicant's specification in page 11, par. [0038-0040]).

Haymes discloses all the function of communication between mobile device and base station with specifically error database based on high error rates and dead

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zones. However, Haymes does not disclose what type of communication message "signal" for communicated between base station and mobile device such as CDMA or TDMA. Unfortunately, Applicant's specification does not mention CDMA or TDMA. Oh discloses in specifically CDMA which used the pilot strength signal to monitoring the power level for all mobile device in cells/ base station in cellular communication network (See col. 1, lines 25-31). The pilot signal is a type wireless signal used by CDMA protocol controlled by base station and MSC to monitoring the power level in control channel (col. 5, lines 53-57).



Phuoc Doan

01/19/06



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